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AUG 05 2009

OFFICE OF PETITIONS

In re Application of :
Benjamin et al. :
Application No. 10/077,562 : LETTER REGARDING
Filed: February 15, 2002 : PATENT TERM ADJUSTMENT
Attorney Docket No. 11336-1161:
(P01139US) :

This is in response to the "REQUEST FOR REVIEW OF PATENT TERM ADJUSTMENT", filed May 26, 2009. Applicant requests that the determination of patent term adjustment under 35 U.S.C. § 154(b) be reviewed for accuracy. This petition is properly treated under 37 CFR 1.705(b).

The request for review of the patent term adjustment is **GRANTED**.

The Office has updated the PAIR screen to reflect that the correct Patent Term Adjustment (PTA) determination at the time of the mailing of the Notice of Allowance is one thousand eight hundred sixty two (**1862**) days. A copy of the updated PAIR screen, showing the correct determination, is enclosed.

On April 30, 2009, the Office mailed the Determination of Patent Term Adjustment under 35 U.S.C. 154(b) in the above-identified application. The Notice stated that the patent term adjustment to date is (1895) days.

Applicants question whether the patent term adjustment pursuant to 35 USC 154(b) of 1895 days indicated on the Determination of Patent Term Adjustment may extend the patent term by too many days.

A review of the application history confirms an error.

A period of reduction of 33 days should have been entered based on 37 CFR 1.704(c)(8). 37 CFR §1.704(c)(8) provides that a period of reduction is entered for:

Circumstances that constitute a failure of the applicant to engage in reasonable efforts to conclude processing or examination of an application also include the following circumstances, which will result in the following reduction of the period of adjustment set forth in § 1.703 to the extent that the periods are not overlapping:

(8) Submission of a supplemental reply or other paper, other than a supplemental reply or other paper expressly requested by the examiner, after a reply has been filed, in which case the period of adjustment set forth in § 1.703 shall be reduced by the number of days, if any, beginning on the day after the date the initial reply was filed and ending on the date that the supplemental reply or other such paper was filed;

In this instance, after the filing of a response on November 19, 2008, applicants filed a supplemental response on December 22, 2008, in the form of an IDS. The record supports a conclusion that the IDS was not expressly requested by the examiner. Accordingly, the PTA should have been reduced by 33 days, the number of days beginning on the day after the date the initial reply was filed, November 20, 2008, and ending on the date that the supplemental reply or other such paper was filed, December 22, 2008.

In view thereof, the correct determination of PTA at the time of the mailing of the notice of allowance is one thousand eight hundred sixty two (1862) days.

As this letter was submitted as an advisement to the Office of an error against applicants' favor, the Office will not assess the \$200.00 fee under 37 CFR 1.18(e). The Office thanks applicants for their good faith and candor in bringing this to the attention of the Office.

The application is being forwarded to the Office of Data Management for issuance of a patent. The patent term adjustment indicated on the patent (as shown on the Issue Notification mailed about three weeks prior to patent issuance) will include

any additional adjustment accrued both for Office delay in issuing the patent more than four months after payment of the issue fee and satisfaction of all outstanding requirements, and for the Office taking in excess of three years to issue the patent (to the extent that the three-year period does not overlap with periods already accorded).

Telephone inquiries specific to this matter should be directed to the Petitions Attorney Charlema Grant at (571) 272-3215.

Kery A Fries

Kery Fries
Senior Legal Advisor Attorney
Office of Patent Legal Administration

Enclosure: Copy of REVISED PALM Screen



Day : Sunday
Date: 8/2/2009
Time: 12:15:17

PTA Calculations for Application: 10/077562

Application Filing Date:	02/15/2002	PTO Delay (PTO):	1924
Issue Date of Patent:		Three Years:	0
Pre-Issue Petitions:	0	Applicant Delay (APPL):	29
Post-Issue Petitions:	0	Total PTA (days):	1862
PTO Delay Adjustment:	-33		

File Contents History

Number	Date	Contents Description	PTO	APPL	START
95	08/02/2009	ADJUSTMENT OF PTA CALCULATION BY PTO		33	
79	04/30/2009	MAIL NOTICE OF ALLOWANCE			
78	04/29/2009	DOCUMENT VERIFICATION			
77	04/29/2009	ISSUE REVISION COMPLETED			
76	04/29/2009	NOTICE OF ALLOWANCE DATA VERIFICATION COMPLETED			
75	04/27/2009	NOTICE OF ALLOWABILITY			
74	04/01/2009	INFORMATION DISCLOSURE STATEMENT CONSIDERED			
72	04/01/2009	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
71	04/01/2009	REFERENCE CAPTURE ON IDS			
70	04/15/2009	DATE FORWARDED TO EXAMINER			
69	04/01/2009	REQUEST FOR CONTINUED EXAMINATION (RCE)			
68	04/15/2009	DISPOSAL FOR A RCE/CPA/129 (EXPRESS ABANDONMENT IF CPA)			
67	04/03/2009	FINISHED INITIAL DATA CAPTURE			
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65	04/01/2009	WORKFLOW - REQUEST FOR RCE - BEGIN			
64	03/24/2009	WORKFLOW - QUERY REQUEST - FINISH			
63	03/20/2009	TC RETURN TO PUBS			
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61	03/20/2009	MAIL MISCELLANEOUS COMMUNICATION TO APPLICANT			
60	03/16/2009	EXAMINER'S AMENDMENT COMMUNICATION			
59	03/16/2009	MISCELLANEOUS COMMUNICATION TO APPLICANT - NO ACTION COUNT			

58	12/22/2008	INFORMATION DISCLOSURE STATEMENT CONSIDERED			
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38	07/18/2008	NON-FINAL REJECTION			
37	07/17/2008	CORRESPONDENCE ADDRESS CHANGE			
36	06/10/2008	TRANSFER INQUIRY TO GAU			
35	03/10/2008	TRANSFER INQUIRY TO GAU			
34	10/17/2007	WITHDRAW FLAGGED FOR 5/25			
33	10/16/2007	FLAGGED FOR 5/25			
32	12/14/2006	CASE DOCKETED TO EXAMINER IN GAU			
31	12/01/2006	CASE DOCKETED TO EXAMINER IN GAU			
30	07/22/2005	INFORMATION DISCLOSURE STATEMENT CONSIDERED			
29	05/17/2004	INFORMATION DISCLOSURE STATEMENT CONSIDERED			
28	02/14/2003	INFORMATION DISCLOSURE STATEMENT CONSIDERED			
27	11/07/2006	MAIL-PETITION DECISION - DISMISSED			
26	11/06/2006	CHANGE IN POWER OF ATTORNEY (MAY INCLUDE ASSOCIATE POA)			
25	10/27/2006	CASE DOCKETED TO EXAMINER IN GAU			
24	10/05/2006	CASE DOCKETED TO EXAMINER IN GAU			

23	07/22/2005	REFERENCE CAPTURE ON IDS			
22.7	07/22/2005	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
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21	09/12/2005	PETITION ENTERED			
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12	05/17/2004	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
11	03/26/2004	IFW TSS PROCESSING BY TECH CENTER COMPLETE			
10	03/26/2004	REFERENCE CAPTURE ON IDS			
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8.7	02/14/2003	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
8	02/14/2003	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
7	08/23/2002	CASE DOCKETED TO EXAMINER IN GAU			
6	03/18/2002	APPLICATION DISPATCHED FROM OIPE			
5	03/14/2002	APPLICATION IS NOW COMPLETE			
2	03/01/2002	IFW SCAN & PACR AUTO SECURITY REVIEW			
1	02/15/2002	INITIAL EXAM TEAM NN			

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EXPLANATION OF PTA CALCULATION

EXPLANATION OF PTE CALCULATION

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